IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC
SERVICES, INC.,
Plaintiff

v. CIVIL ACTION NO. 03-394 ERIE

CENTRAL TRANSPORT
INTERNATIONAL, INC. and
LOGISTICS PLUS, INC.,
Defendants

JURY TRIAL - DAY NO. 4

Proceedings held before the HONORABLE

SEAN J. McLAUGHLIN, U.S. District Judge,

in Judge's Chambers & Courtroom C,

U.S. Courthouse, Erie, Pennsylvania, on

Thursday, October 20, 2005.

APPEARANCES:
W. PATRICK DELANEY, Esquire, appearing on behalf
of the Plaintiff.

JEFFREY D. COHEN, Esquire, appearing on behalf of Defendant Central Transport International, Inc.

W. JOHN KNOX, Esquire, appearing on behalf of Defendant Logistics Plus, Inc.

Ronald J. Bench, RMR - Official Court Reporter

P R O C E E D I N G S

(Whereupon, the proceedings began at 8:50 a.m., on Thursday, October 20, 2005, in Judge's Chambers.)

THE COURT: Go ahead.

MR. DELANEY: First of all, I apologize for this being so late. But I raised the issue yesterday about whether the burden is on defendants show that the conduct of the shipper as the sole cause. I found two Third Circuit cases that say just that. They are Paper_Magic in 2003, and Beta_Spawn -- I believe I've marked the pages.

THE COURT: Go ahead.

MR. DELANEY: What I think this means is you don't charge on substantial factor. You just have to say the burden is on them to show that the damage arose solely or entirely because of the conduct of the plaintiff.

THE COURT: With that, I glanced at the Third Circuit cases, you might want to let defense counsel see them. They apparently stand for that proposition. But with that having been said, why don't you all take a few minutes just to read, re-look through the charge, I think the most significant changes would be on the first five pages, then take a look at the verdict slip. When you're done doing that, I'll chat with you a little bit.

(Recess from 8:54 a.m.; until 9:01 a.m.)

THE COURT: Let's first talk, before you folks bring up anything you want to, let's first talk about the charge insofar as it relates to the question of causation. Either be sole or substantial. Have the defendants had a chance to look at those cases?

MR. KNOX: Very briefly.

MR. COHEN: I looked at the cases briefly, I was just looking through the Carmack Amendment.

THE COURT: Does it speak to this issue?

MR. COHEN: I'm scanning it now.

MR. KNOX: Causation, your Honor, I believe is referenced in subsection(a)(1) of 14706, in terms of sources of cause to damage. Where it talks about property caused by the receiving carrier, the delivering carrier or another carrier over whose route the property is transported. It doesn't really flush it out anymore than that, though.

THE COURT: Apparently, to the extent it's been flushed out, it's a creature of case law. In any event, what I need to know, in light of the teachings of those two Third Circuit cases, do the defendants have a position on how the jury should be charged in that regard?

MR. KNOX: Certainly we prefer not to have that charge, the cases stand for the proposition as they do. I don't see anything in the Carmack Amendment that diverges from that. It's very general in the statute.

MR. COHEN: Your Honor, unfortunately, this is being brought up at the last minute, I haven't had an opportunity, I didn't bring any case law, I didn't know it was an issue. I haven't had an opportunity to evaluate this issue. But these cases do say what they say.

THE COURT: All right. Since I'm living in the Third Circuit, I generally try to do what the Third Circuit tells me. I'm going to charge on sole cause, but because it appears to be consistent with the cases that were cited. The floor is open for any other issues.

MR. DELANEY: Judge, I don't think you have to change the interrogatories very much, other than number three. Instead of saying was the lack of proper packaging a substantial factor --

THE COURT: Insert sole cause.

MR. DELANEY: Was the sole factor in causing the damage to the cargo.

THE COURT: I think it's correct. The interrogatories, you will note, although we charge on negligence and explain to the jury what negligence is, there is no separate interrogatory in there relative to negligence.

MR. DELANEY: I'm not asking for one, either. Mr. Knox is right, the case law in flushing this out says their burden is to show the lack of negligence and the sole cause on

the part of the damage being the act of the shipper. That may be a bit redundant.

THE COURT: In this case because where the defense is, is that the shipper itself did something, you either win or lose on that prong, it seems to me.

MR. KNOX: I think that it is true. Obviously, from Accu-Spec's point of view, packaging is the whole shooting match for them, if they win on that issue, they win against us. But from a defense standpoint, I think it matters because I think the jury again will have to say okay, has this defendant met prong one and prong two. Has this defendant met prong one and prong two. I think we can meet prong one and arguably prong two. I don't know if they can meet prong one.

THE COURT: I still don't understand what you're saying, John.

MR. KNOX: Because it's possible, even though the jury agrees --

MR. KNOX: Negligence entails causation, I think in the way the cases are talking about. If they prove this is solely our fault, if there is negligence in the air and it's unrelated to this damage, it wouldn't be related, it wouldn't help me.

MR. COHEN: I think negligence is out as well. I think that it's clear with respect to when it just says the X-ray equipment was packaged improperly, I don't think you need

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that negligence clause in there.

THE COURT: Negligence in where?

MR. COHEN: In page three.

THE COURT: Just take it out?

MR. COHEN: I'd just take it out.

THE COURT: Really it's a causation case. I mean you got to get both if you can. If you can't nail the shipper, everybody agrees to that, we'll take out the negligence.

MR. KNOX: I'd like to keep it in, obviously, I mentioned it in my closing. That was my understanding, it was going to be in there.

THE COURT: I just don't see how it factually fits, given the way the case came in. So even though and, frankly, this is just as an aside. The two part requirement of an affirmative defense, showing you weren't negligent and something else was the causative agent, is probably legally redundant to a certain extent. But be that as it may, I'm going to take it out.

MR. DELANEY: You're going to take out the top paragraph of four, which is the substantial factor explanation?

THE COURT: It's going to be one sentence. Must be the sole factor. Do you have something else?

MR. COHEN: Yes, your Honor, one small item on paragraph three. At the beginning it says once Accu-Spec, the shipper, establishes that the equipment was given -- I would

just ask that it say if Accu-Spec, the shipper, establishes.

THE COURT: I'll change that, that's a fair point.

MR. COHEN: The other small item is in the third, says third, Accu-Spec, the shipper, must establish the amount of money damages. I would ask the word reasonable be put in there to be consistent with the law.

THE COURT: That's fair enough.

MR. COHEN: Lastly, your Honor, with all due respect, only to preserve the record, we'd ask that our jury instructions as presented in our pleadings be used. We do object to this jury instruction and we do object to the interrogatories to the jury instruction. And move that our jury interrogatories as presented be used for the jury in the case.

THE COURT: Do you have those handy with you -- where is your jury interrogatories?

MR. COHEN: They're at page 28, your Honor.

THE COURT: Okay. Your request is noted, of course it's preserved for the record.

MR. KNOX: Similarly, judge, we lodge, just for the record, a similar objection.

THE COURT: You want your interrogatories?

MR. KNOX: Correct.

THE COURT: All right. Do you have any objections?

MR. DELANEY: To the charge, no. I do want to alert your Honor, I think we've already filed a motion to reconsider the issue of counsel fees. I think it's necessary for us to win this case first.

THE COURT: I haven't seen it.

MR. DELANEY: If we have it, we'll file it today.

THE COURT: Did I rule on that already?

MR. DELANEY: You ruled as to --

MR. KNOX: It's already been reconsidered.

MR. DELANEY: We're going to ask you to look at it again in light of the evidence that has come into the case. But we have to win our case first, I realize that.

THE COURT: That's true. Finally, you'll notice where I say to the jury something to the effect that if you find that Central Transport is liable, you must fined Logistics is liable. No one disputes that as a matter of law, do they? Hearing no disputes, I will take that as a no.

MR. DELANEY: Are you going to give them the written charge?

THE COURT: Yes, it's my practice. Particularly, even though this is a short case, it's complicated for them.

(Whereupon, at 9:11 a.m., the proceedings recessed in Judge's Chambers; and at 9:28 a.m., reconvened in Courtroom C.)

THE COURT: Ladies and gentlemen, it is now my duty to tell you about the law that is to be applied to this case in

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which you will be the finders of fact. You have heard all of the arguments and all of the evidence, it's my function to charge you on the law which you are required to consider and which will govern your deliberations.

This is a dispute between Accu-Spec Electronic Services, Inc., the plaintiff, and Central Transport International, Inc., and Logistics Plus, Inc., as defendants. In these instructions I will refer to the plaintiff as Accu-Spec. I will refer to the defendants as Central Transport and Logistics Plus.

In deciding these issues of fact, it is your duty, ladies and gentlemen, to follow these instructions. In doing so, you must take into consideration all of the instructions I give you, and not pick out any particular instruction and disregard another one. Your duty is to determine the facts from the evidence that has been produced in open court. You are to apply the facts as you find them to the law that I am giving you, and neither sympathy nor prejudice should influence you in any way. Our system of law does not permit jurors to be governed by sympathy, prejudice or public opinion.

At the outset you should understand that I am absolutely neutral in presenting these instructions to you. I will not give you my opinion about any issue of fact to be determined by you. Nothing in the way in which I give my instructions to you is intended as an expression of my opinion

about any fact at issue in the case.

I will now instruct you on the substantive principles of law that govern the plaintiff's claims in this case.

In January of 2003, Accu-Spec contacted Logistics Plus to arrange for a shipment of Accu-Spec's industrial X-ray machine from Fremont, California to Accu-Spec's facility in

Erie, Pennsylvania. Logistics Plus did not physically transport the industrial X-ray machine from California to Pennsylvania, but made arrangements with a trucking company, Central Transport, to physically move the equipment. Central Transport is in the business of hauling freight in interstate commerce.

Thus, in this transaction, Accu-Spec is considered to be a shipper. Logistics Plus is considered to be a freight forwarder. And Central Transport is considered to be a motor carrier.

A law, adopted by the United States Congress, sets forth certain rules and principles concerning the relationship between shippers, freight forwarders and motor carriers. That law establishes that a motor carrier such as Central Transport may be held liable for the actual loss or injury to property which it transports. That same law indicates that a freight forwarder, such as Logistics Plus, may be held liable for the actual loss or injury to property for which it arranges

transport. Under this law, the shipper, Accu-Spec, does not have to prove that the motor carrier of the freight forwarder acted in a careless or negligent manner in handling the equipment.

In order for a shipper, such as Accu-Spec, to recover damages from a motor carrier, such as Central Transport, or a freight forwarder, such a Logistics Plus, the shipper must establish certain facts by direct or circumstantial evidence. Specifically, Accu-Spec, as the shipper, must establish three things.

First, Accu-Spec, the shipper, must establish, by direct or circumstantial evidence, that the equipment was given to the motor carrier, Central Transport, in good condition.

Second, Accu-Spec, the shipper, must establish that the equipment arrived in Erie, Pennsylvania either damaged or destroyed.

And, third, Accu-Spec, the shipper, must establish the amount of reasonable money damages which it incurred in order to repair the industrial X-ray machine.

Now, if Accu-Spec, the shipper, establishes that the equipment was given to Central Transport in good condition; return from Central Transport in damaged condition; and the amount of money damages which Accu-Spec incurred, the burden then shifts to the motor carrier, Central Transport, or the freight forwarder, Logistics Plus, to demonstrate that they are

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not liable. The only means by which Central Transport or Logistics Plus can avoid liability for damages is if they can prove that the manner in which the X-ray equipment was packaged was improper and that the packaging was the sole factor in causing the damage.

If you find that Central Transport is liable, you must also find that Logistics is liable, and you must find them liable in the same amount, although, there will be only one recovery.

I will now give you a few guidelines on how to deliberate upon the evidence you have heard.

As I told you at the beginning of this case, the evidence which you are to consider consists of the testimony of the witnesses and the exhibits offered and received into evidence. The proceedings during this trial have been governed by rules of law, and we have had a number of conferences to determine what evidence should be allowed to be submitted to you.

From time to time it has been my duty to rule on evidence to be submitted, and you should not concern yourselves with the reasons for those rulings. You are not to consider any testimony or any exhibit to which I have sustained an objection, or any exhibit which may have been ordered stricken from the record, or which has not been introduced into evidence.

The attorneys have argued very ably and thoroughly, and they have been well prepared, but their remarks, that is what they have said to you, is not evidence. They have argued to help you understand the facts and their respective theories of the case, but their arguments, again, are not evidence. You must consider as evidence only the testimony and the exhibits. If you find that any argument, statement or remark of counsel has no basis in the evidence, then you should disregard that argument, statement or remark. Similarly, if you find that anything I tell you about the facts is not based on the evidence, you should disregard that, too, because you are the finders of fact. It is up to me only to tell you what the law is.

The next matter about which I will instruct you is the applicable burden of proof. The burden of proof is a concept which you must understand in order to give the case proper consideration, because a verdict cannot be based on speculation, guess or conjecture.

Now, in civil cases such as this one, the plaintiff has the burden of proving those contentions that entitle him to relief by a preponderance of the evidence. Thus, Accu-Spec carries the burden of proving, by a preponderance of the evidence, that the cargo was received by Central Transport in good condition, that the cargo arrived damaged in Erie, Pa, and the amount of the damage. If Accu-Spec is able to do so, the

burden then shifts to Central Transport or Logistics Plus to demonstrate by a preponderance of the evidence that the X-ray equipment was packaged improperly and that the packaging was the sole factor in causing the damage.

The fair weight or preponderance of the evidence means evidence which has more convincing force when it is weighed against the evidence opposed to it so that the greater probability of truth lies therein. If we were to visualize evidence as something weighed on an ordinary balance scale, and if the evidence admitted in support of the claim made by the party having the burden of proof is more weighty in probative value than the evidence offered in opposition so that it tips the scales on the side of that party, then that party has proved the claim by the fair weight or preponderance of the evidence.

If, on the other hand, the evidence admitted in opposition to the claim of the party having the burden of proof equally balances the evidence produced in support of the claim, it can be said that there has been a failure to carry the burden of proof imposed by law.

Now, it's important to note here that we speak of the quality of evidence, not necessarily its quantity. Also, all of the evidence admitted in support of, and in opposition to, a claim must be considered, and not just the evidence offered by the party having the burden of proof. In short, the test is not which side brings the greater number of witnesses or presents the greater quantity of evidence, but which witness or witnesses and which evidence you consider most worthy of belief. Even the testimony of one witness may outweigh that of many, if you have reason to believe his or her testimony in preference to their testimony.

In deciding this case, members of the jury, you should consider all of the evidence presented by the parties. Consideration of all of the evidence, however, does not mean that you must accept all of the evidence as true or accurate. In this connection, the evidence in the case consists of the sworn testimony of the witnesses, regardless of who may have called them, all exhibits received into evidence, regardless of who may have produced them; and all facts which have been admitted or stipulated to by the parties.

While you may consider only the evidence in the case in arriving at your findings of fact, you are permitted to draw such reasonable inferences from the testimony and the exhibits of counsel, as you feel are justified in light of common experience. An inference is not a suspicion or guess. A suspicion is a belief based on circumstances which do not amount to proof. An inference, on the other hand, is a reasoned logical decision to conclude that a disputed fact exists on the basis of another fact that you know exists. In other words, you may reach conclusions which reason and common

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sense lead you to reach from the facts which have been established by a preponderance of the evidence in the case.

There are times when different inferences may be drawn from the facts, whether proved by direct or circumstantial evidence. Plaintiff will ask you to draw one set of inferences, while the defendants will you ask you to draw another. It is for you, and you alone, to decide what inferences you will draw.

In deciding this case, you are required to pass on the credibility of witnesses. Credibility simply means believability. Your function is to decide what is believable, who is believable and how much weight to give it. In doing this, you use your common sense, your varied backgrounds and experiences, the usual indicators of truth that you use in your daily lives.

A witness's testimony depends on the witness's observation and perception of what he or she testifies to. It also depends on the witness's memory and what he or she experienced at the time, and the witness's ability to create that experience in court.

You may consider the degree of the witness's intelligence, the demeanor and appearance of the witness, the witness's frankness, his or her candor, the evasiveness or responsiveness, as well as the reasonableness or unreasonableness of the witness's testimony in light of all the

circumstances. You may also consider any interest or bias that might lead a witness to exaggerate, understate or otherwise color their testimony, such as a witness's interest in the outcome of the case or a bias or prejudice that a witness might have in favor of or against a party. Now, this is not to suggest that the interest or bias of a witness would lead the witness to tell you a falsehood or color his or her testimony one way or the other, but bear these factors in mind in passing on the credibility or believability of every witness.

I charge you that if you find that a witness has lied to you in any material portion of his or her testimony, you may disregard that witness's testimony in its entirety. I say that may disregard that testimony, not that you must. If you choose to disregard the testimony of any witness because you believe that a witness has been untruthful with you, it must have been untruthfulness in a material portion of that witness's testimony. You must also be careful, though, that the untrue part of the testimony was not a result of a mistake or inadvertence, but was, rather, willful and stated with a design or intent to deceive.

Regardless of whether a witness's testimony is untruthful by design or inadvertence, however, you may reject all or any portion of the testimony, as in the case of any witness, if the testimony is not believable by you. On the other hand, you may be convinced that, despite the falsity of a

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part of the witness's testimony, he or she, in other parts, testified truthfully.

You may find inconsistencies in the evidence, even actual contradictions in the testimony of witnesses, although it does not necessarily mean that any witness has been willfully false. Poor memory is not uncommon. Sometimes a witness forgets. Sometimes he or she remembers incorrectly. It is also true that two persons witnessing the same incident may see it or hear it differently. If different parts of the testimony of any witness or witnesses appear to you to be inconsistent, you should try to reconcile the conflicting statements, whether of the same or different witnesses, and you should do so if it can be done fairly and satisfactorily. If, however, you find that there is a genuine and irreconcilable conflict in the testimony, it is your function and your duty to determine which, if any, of the contradictory statements you will believe.

Let me just ask counsel at this point. There had been a request for a charge on depositions as evidence, there were no depositions in this case, is that right?

MR. COHEN: There were no depositions, your Honor.

THE COURT: All right. We'll excise that.

If you find that Accu-Spec has established its claim against the defendants, you may consider the amount of money to award

Accu-Spec. Under the federal law which governs the

relationship between shippers, freight forwarders and motor carriers, the amount of money to be awarded to the shipper is calculated by the costs to repair the goods. The cost to repair the goods can include the reasonable cost of inspecting the equipment and of shipping the equipment to the place where it was repaired, in this case England, if you find that shipping the equipment to England was reasonable.

As I mentioned at the beginning of the case, I am entirely neutral about its outcome. I do not want you to think that anything I have said, any instruction that I have given you, any ruling I may have made on the evidence or any statement that I made either to you or to counsel, implies that I have any position in this case at all, other than to give you fairly the law that you are required to apply, and to rule fairly and impartially on the evidence that has been submitted to you. I have absolutely no interest in how this case resolves itself, only in the procedure by which it is done.

As I told you before, it is for you, and you alone, to determine the facts of the case and the credibility of each of the witnesses. If your recollection of the testimony varies with any statements that are inadvertently made by me or counsel for any party in reviewing the testimony, you have to be guided by your own memory and your recollection of the testimony. You determine the facts from all of the testimony that you have heard, and the other evidence which has been

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received during the trial. Neither I nor anyone else may infringe on your responsibility as the sole judges of the facts. On the other hand, and of equal importance, you must accept the rules of law as I give them to you and apply those rules to the facts of the case.

I am now going to, in the last minute or so, instruct you on your deliberations, what you are to do when you retire to the jury room. First, the attitude and conduct of the jury at the outset of the deliberations are matters of considerable importance. When you retire to the jury room for your deliberations, they should proceed in an orderly fashion. The first order of business in the jury room will be to select one of you to act as foreperson. You are free to select any one of you to act in that capacity. The foreperson will preside over your deliberations and will speak for you here in court should that become necessary. One more thing about the foreperson. The fact that somebody is a foreperson does not mean that his or her vote is entitled to any greater weight than the vote of any other juror.

In the course of your deliberations, if you should find yourself in doubt concerning any part of my instructions to you about the law, you may request further instructions or clarification. In that event, you should transmit a note, signed by the foreperson, to me through my courtroom deputy. I will not communicate with any juror on any subject relating to

the merits of the case except in writing or orally here in court with all counsel present. My deputy clerk will show you, if you don't already know where it is, there is a button in your jury room that rings into my chambers. And if you should have a question or anything like that, write it on a piece of paper, hit the button and somebody will come and get it.

You should not at any time reveal, even to me, how you stand numerically until you have reached a verdict. Your responsibility to reach a fair conclusion from the evidence and the applicable law is an important one. Your verdict should be reached only after careful and thorough deliberations during which you should consult with each other and discuss the evidence and reasonable inferences to be drawn from the evidence freely and fairly in a sincere effort to arrive at a just verdict.

It is your duty to consider the evidence with a view toward reaching agreement on a verdict if you can do so without violating your individual judgment or conscience. You must decide the case for yourself, examining the issues in evidence with candor and frankness, and with proper deference to and with regard to the opinions of each other. Mature consideration requires that you be willing to re-examine your own views and to change your opinions if you're convinced that your opinions lack merit or validity. On the other hand, while you may maintain this flexibility, no juror is required to surrender his or her honest conviction as to the weight or effect of the evidence because another juror's opinion differs from his or hers, or for the mere purpose of returning a verdict.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict, therefore, must be unanimous.

Keep in mind, then, in conclusion, the dispute between the parties in this case is for them a most serious matter. They and the court rely on you to give full and conscientious deliberation and consideration to the issues and evidence before you. You should not allow prejudice or sympathy to influence your deliberations. You should not be influenced by anything other than the law and the evidence in the case. All of the parties stand equal before this court, and each is entitled to the same fair and impartial treatment at your hands.

Now, couple of other quick notes. When you return to the jury room, you are going to be given something styled Interrogatories To The Jury. It is self-explanatory, it has various questions that you're going to have to answer. Once you have reached a verdict, whatever the verdict may be, it is necessary that on the back page of the verdict form it's been signed by the foreperson and each of the jurors also has to

sign. And you'll note that there's a line for the date, it should be dated as well. The other thing I'm going to send out to you, as soon as we make the slight excision from the written charge I just gave you, I'm going to give you a couple copies of this written charge. I find that's helpful, people are scribbling away trying to write it all done and that becomes somewhat difficult at times. I'm going to stay on the bench just for a second, but you folks are now free to go back in the jury room. But before you do, let me administer the oath here to my Deputy Clerk.

(Whereupon, the Deputy Clerk was sworn.)

THE COURT: You can take them back, we'll get the exhibits and whatnot back to you.

(Whereupon, at 9:50 a.m., the Jury was excused to begin their deliberations.)

(In Judge's Chambers at 1:25 p.m.)

THE COURT: I received the following question from the jury, signed by the foreperson, Wendy Spaeder. "Given the instructions on page four, top sentence 'If you find that Central Transport is liable, you must also find that Logistics is liable, and you must find them liable in the same amount, although there will be only one recovery'." Then a question. "Does the amount on question six and seven of the jury questions have to be the same dollar amount?" The answer to that is yes. And that is what I propose to tell them.

(Whereupon, at 1:26 p.m., proceedings recessed in Judge's Chambers; and reconvened in Courtroom C as follows:)

THE COURT: Let me see counsel at side bar.

(At side bar on the record.)

THE COURT: It occurred to me, without knowing for sure, that the jury might have been trying to ask -- for instance, let's assume they found damages in the amount of $1,100, if it would be split between the two. I propose to tell them there is no splitting of damages, whatever the amount of damages is, that amount of damages should be entered for both. Does anybody have a problem with that?

MR. COHEN: What if you have two amounts of damages in excess of the recovery.

THE COURT: Tune with me, Mr. Cohen, all right. Are you suggesting that, for instance, if the jury found damages in the amount of $100 total damages, the amount of $100, that they would apportion those damages, for instance, 50-50 between Central Transport and Logistics?

MR. COHEN: Let me take a look at this. This says "you must find them liable in the same amount."

THE COURT: So I'm inclined, I want to give everybody the opportunity, is it your position that on some legal basis there should be some type of apportionment of damages between the two of you?

MR. COHEN: No, I misread your charge.

THE COURT: All right.

(End of discussion at side bar.)

THE COURT: I received the following question from the jury. "Given the instructions on page four, top sentence 'if you find that CT,' in other words, Central Transport, 'is liable, you must also find that Logistics is liable, and you must find them liable in the same amount, although they will be only one recovery.' Does the amount on question six and seven of the jury questions have to be the same dollar amount?" The answer is yes. I'm not sure if you were asking me something more than that, but the answer is yes. Does that answer your question?

THE FOREPERSON: Yes.

THE COURT: Very good.

(Whereupon, at 1:30 p.m., the proceedings recessed; and at 2:20 p.m., reconvened with the Jury's verdict.)

THE COURT: I understand you've reached a verdict, is that right?

THE FOREPERSON: Yes.

THE COURT: Would you please retrieve the verdict form. The verdict seems to be in order, you can publish it.

DEPUTY CLERK: "Did Defendant Central Transport receive the cargo in good condition? Yes."

Was the cargo improperly packaged by Accu-Spec? No.

THE COURT: Say the question that you're doing first. Start that all over again.

DEPUTY CLERK: "Question 1. Did Defendant Central Transport receive the cargo in good condition? Yes.

Question 2. Was the cargo improperly packaged by Accu-Spec? No.

Question 4. Was it reasonable for the plaintiff, after discovering that the cargo was damaged, to have the damage inspected by a representative of the manufacturer from England? No.

Question 5. Was it reasonable for the plaintiff, after discovering that the cargo was damaged, to have the cargo shipped to England to be repaired? Yes.

Question 6. What amount, if any, is plaintiff entitled to recover from Central Transport? $21,000.

Question 7. What amount, if any, is plaintiff entitled to recover from Logistics Plus? $21,000."

Signed by the foreperson, Wendy L. Spaeder, 10-20-05, and the seven other jurors.

MR. DELANEY: May we have a side bar?

THE COURT: Yes.

(At side bar on the record.)

MR. DELANEY: The answers to interrogatories indicate clearly they went with a different amount than the expense incurred. I have a fear that what they have done here is taken a $42,000 verdict and divided it in two. And so I

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would ask that you poll the jury and I would ask that you simply ask them is this their verdict, that you want Accu-Spec to collect a total of $21,000 -- which clarifies they're not apportioning the damages.

THE COURT: Tell me again what you propose that I do by way of polling this jury?

MR. DELANEY: I propose that you poll the jury by simply asking is it your verdict that Accu-Spec may collect a total of $21,000 for damages.

MR. COHEN: I strongly object to that request. The jury questionnaire was discussed among ourselves and agreed to. Everyone came to the same conclusion on that question. It should stand.

MR. DELANEY: I think I have the right to poll the jury. I don't think that's misquoting it, it's clearly within your discretion.

THE COURT: You always have the right to poll the jury. Typically what a jury is asked is, was the verdict as read your verdict. They all say yes.

MR. DELANEY: All I'm asking is you clarify the verdict, that the total number to be collected by Accu-Spec is $21,000.

THE COURT: Let me see the charge -- does someone have a copy of the charge?

MR. DELANEY: I do. I'm sorry, that's the old one.

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THE COURT: Just where in the charge do I talk about this?

MR. DELANEY: It had been in your most recent charge at the top of page four. "If you find that Central Transport is liable, you must also find that Logistics is liable, and you must find them liable in the same amount, although there will be only one recovery."

THE COURT: What was the cost incurred in bringing this back from England?

MR. DELANEY: I want to say roughly -- it was about $23,000.

THE COURT: What was your total claim?

MR. DELANEY: $47,521.

THE COURT: Even if you deduct that, it doesn't get you to 41?

MR. DELANEY: Right. Let me just say this. What harm does it do to ask them is this your verdict that the plaintiff may collect a total of $21,000, doesn't do any harm. If that's their verdict, they're going to say yes.

THE COURT: I'm thinking this through. I understand your objection. I'm going to take a short break and take a look at the law on this. My suspicion is, although it's just a suspicion, that they assumed you would recover $21,000 from one and $21,000 from the other. They cut the baby, half of it. I don't know that for a fact. I'm also sensitive to Mr. Cohen's

point. All right, I'm going to take a look at this.

(End of discussion at side bar.)

THE COURT: Members of the jury, we have to convene and chat a little bit about this verdict form. So at the risk of you folks going on an active rebellion, I'm going to ask you to go back in the jury room for just a few minutes and we'll get you right back out here.

(Whereupon, at 2:28 p.m., proceedings recessed in Courtroom C; and at 2:55 p.m., reconvened in Judge's Chambers.)

THE COURT: Can I see your itemized damages. Over here on defendants side, there was no stipulation to any of these, was there?

MR. COHEN: No.

MR. DELANEY: There was certainly comments that there was no question of the reasonableness of the repair. But there was certainly a question about the reasonableness of it going to the UK.

MR. COHEN: There was no stipulation. That's correct, there was a reasonableness issue raised with respect to the England issues.

THE COURT: You just didn't argue reasonableness with respect to any of the other items really?

MR. COHEN: That's correct.

THE COURT: Rule 49 talks about the court may, in cases where there's an inconsistent verdict, a trial judge has

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the discretion to resubmit issues to the jury with a request for clarification under 49(b). The court may either return a jury for further consideration of its answers to interrogatories or order a new trial. That's where there's something patently inconsistent. That isn't here.

MR. DELANEY: Let me say, judge, I'm not asking to return the jury or give these new instructions. I'm asking they be polled to determine if this is your verdict, that Accu-Spec may only recover a total of $21,000. That's all I'm asking. If they say yes, we're all going home. If one of them says no, I understood it to be if they say no, then we need clarification from them. But all I'm asking is that there be a poll of the jury, that the jury be asked that question, is this your verdict that Accu-Spec may collect a total of $21,000.

MR. REILLY: I think clearly the jury has spoken, that they've been given adequate instruction, they've been agreed to by all parties.

THE COURT: Before you go on, you don't even appear of record. But I'm happy to hear what you have to say, all I want you to do is indicate for the court reporter, when somebody is reading this thing, they'll know who you are?

MR. REILLY: Michael Reilly, corporate counsel for Logistics Plus.

THE COURT: Go ahead, Mr. Reilly.

MR. REILLY: This jury has spoken. The verdict is

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in. It has been accepted by the judge. We're ready to go home.

THE COURT: Nothing has been accepted by the judge yet, that's why we're here. I may well do that ultimately. Look it, two points. Even if you subtract the inspection by Mr. Dunn of $2,150.82, it doesn't get you to where the jury is.

MR. DELANEY: Right.

THE COURT: The harsh reality, legal reality is that even in the face of damages that aren't actively contested unless they're stipulated to, the jury is always free to sit back and make their conclusion whether something is reasonable.

MR. DELANEY: I'm not even there. All I'm asking for you to do is poll the jury. And if the jurors say yes, that's our verdict, then we'll go back and make our assessment of what we do next.

MR. KNOX: The instructions, I think the key phrase in there is there can only be one recovery. That clearly communicates to the jury what Mr. Delaney's question is asking.

MR. COHEN: Your Honor, if I may. Your Honor, you've just cited to Rule 49. There's no provision in that rule consistent with the facts to make any additional commentary with the jury. Counsel for the plaintiff sat here and approved this form. He liked this form. Now the form does not suit him, he wants it changed. He wants more questions. He wants different things to happen. That's the problem here.

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This can't be changed. This was agreed to by counsel. This was plain English, this was done. And this is a final decision, there's no federal rules of civil procedure to change this.

MR. DELANEY: Judge, I'm not asking you to change it, I'm not asking you to invoke Rule 49. I'm asking to have the jury polled. If not by rule, by custom, I have the right to have the jury polled.

THE COURT: You do have that right.

MR. DELANEY: We had a question by the jury about the issue of how they should address questions six and seven.

THE COURT: Which I answered yes.

MR. DELANEY: And we had a discussion at side bar, in which the court actually came up with an example. If you decide the value as $100, put $100 on both lines.

THE COURT: Unfortunately, the court did not have the foresight to extend that to share that example with the jury panel.

MR. DELANEY: All I'm asking is that you poll the jury and in light of all those circumstances and ask the question. That's all I'm asking.

THE COURT: The question one last time would be what?

MR. DELANEY: Is this your verdict.

THE COURT: They're going to say yes.

MR. DELANEY: Or is it your verdict that Accu-Spec may collect a total of $21,000. Ask them that question. I do have the right to have the jury polled.

MR. COHEN: Your Honor was correct the first time, is this your verdict. You can't go and try to change this conclusion now that you don't like the response when you agreed to it on behalf of your clients.

MR. DELANEY: If I could make one point. I'm not trying to change it. I'm just asking for the jury to be polled.

THE COURT: Is it fair to say that you're asking for clarification from the jury, that's really what you're asking, anyway you slice it?

MR. DELANEY: I'm not asking for clarification if everyone in this room, if others in this room believe that this is the verdict, a total of $21,000. I'm asking them to confirm that they understand and that this is your verdict, to confirm that they understood your last instruction.

THE COURT: This is a real slippery slope for me to get onto. The verdict is what the verdict is. It would be I would be setting a bad precedent to do this. They're often gray areas. As far as I'm concerned, I'm going to let you poll the jury. But the only question is going to be was the verdict as read your verdict. I'm not reluctantly, but I think correctly, going to peel the onion back on this one. You'll

have an opportunity, as painful as it may be, to ask these people after the fact, if you choose to do so, what they were thinking. But I think in this instance that Mr. Cohen and Mr. Knox's point is well-taken. All right. With respect to the questioning, I'm going to do it just to move it along.

(Proceedings recessed at 3:04 p.m., in Judge's Chambers; and reconvened at 3:07 p.m., in Courtroom C.)

THE COURT: Mr. Delaney, did you have a request?

MR. DELANEY: I do, your Honor, that the jury be polled.

THE COURT: All right. I'm going to start right here with juror number one and move this way. Juror number one, would you please stand. Is the verdict as previously read your verdict?

JUROR NO. 1: Yes.

THE COURT: Juror number two. Is the verdict as previously read your verdict?

JUROR NO. 2: Yes.

THE COURT: Juror number three. Is the verdict as previously read your verdict?

JUROR NO. 3: Yes.

THE COURT: Juror number four. Is the previously read verdict your verdict?

JUROR NO. 4: Yes.

THE COURT: Juror number five. Is the verdict as

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previously read your verdict?

JUROR NO. 5: Yes, it is.

THE COURT: Similarly, juror number six. Is the verdict as previously read your verdict?

JUROR NO. 6: Yes, it is.

THE COURT: Juror number seven. Is the verdict as previously read your verdict?

JUROR NO. 7: Yes, sir.

THE COURT: And, finally, juror number eight. Is the verdict as previously read your verdict?

JUROR NO. 8: Yes.

THE COURT: Members of the jury, before I dismiss you, let me thank you for your service here. During the two or three days you've been down at the federal courthouse you've seen all kinds of folks. You've seen some people who work in the Clerk's Office, you've seen some security personnel, probably maintenance people, some of my staff. Obviously, the judge. But really for all intents and purposes when it comes to doing what we do, there is nobody more important than you folks, that is the jurors. Because if we didn't have jurors, this whole jury system, which we are so proud of, would come grinding to a halt. Your service is very important. When you go back in the jury room, I'm going to get off the bench, I just want to come in and chat with you just briefly. And then we'll send you on your way. And as far as I'm concerned, these

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proceedings are now adjourned.

(Whereupon, at 3:10 p.m., the Jury Trial proceedings were concluded.)

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CERTIFICATE

I, Ronald J. Bench, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

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Ronald J. Bench